

CONFIDENTIAL

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15 March 1989
OCA 0892-89

MEMORANDUM FOR: DGC/AS/OGC

FROM:


Legislation Division
Office of Congressional Affairs

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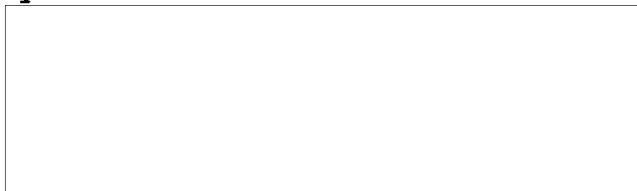
SUBJECT: Request for Comments: Section 579 -
Draft FY '90 Justice Authorization Bill

1. The Office of Management and Budget (OMB) has asked for the Agency's views on the draft Fiscal Year 1990 Department of Justice authorization bill.

2. In order to respond, we would appreciate your comments on Sections 579 of the bill: "Reimbursement of Litigation Expenses" (attached). In particular, we would appreciate your views on whether this represents a new development in the area or mostly a codification of the situation to date.

3. Your cooperation is most appreciated.

4. We ask for your comments by 17 March 1989 so that we may respond to OMB in a timely fashion.



Attachment
As Stated.

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TITLE II

Permanent Authorizing Legislation

Title II of the Bill, for the most part, contains authorizations that were previously enacted in the Department's 1980 annual Authorization Act, which has remained in force through continuing resolutions, and/or that have been sought by the Department in the nine authorization bills submitted to Congress since then. If Title II is enacted as permanent law, future Department of Justice authorizations bills will generally be confined to the true fiscal year authorizations contained in Title I.

Proposed Bill Section 201:

Part II of Title 28, United States Code, is amended by inserting after chapter 37 the following new chapter:

"Sec.

"577. General Authorizations

"578. Authorizations and Exemptions Available for Undercover Investigative Operations

"579. Reimbursement of Litigation Expenses

This section of the bill will amend Title 28, United States Code, by adding chapter 38, which will contain three sections. Proposed section 577 will provide permanent appropriations authorization for the various types of expenses incurred by the Department of Justice in the conduct of its activities. Proposed section 578 will provide specific authorizations and exemptions available only for undercover investigative operations. Proposed section 579 will provide authority for agencies to reimburse the the Department's litigation appropriation for the expenses of private counsel who represent agency personnel who have been civilly sued.

Proposed Section 577:

General Authorizations - Department of Justice

Proposed section 577 contains nine principle subsections. Subsection 577(a) contains eighteen authorization provisions which, in general, are available for all Department of Justice activities. Subsection 577(b) provides general authority to collect and retain user fees and subsection 577(c) provides general gift acceptance authority. Subsections 577(d), (e), (f), (g) and (h) contain specific authorization provisions applicable, respectively, to the Federal Bureau of Investigation, the Drug Enforcement Administration, the Immigration and Naturalization Service, the Bureau of Prisons and the United States Marshals Service. Subsection 577(i) defines the term law enforcement as used in the general authorization provisions of subsection 577(a).

Treasury of the United States as miscellaneous receipts.

"(e) (1) The Attorney General shall direct and supervise a detailed financial audit of each undercover investigative operation which is closed in fiscal year 1990, and each fiscal year thereafter, and shall, not later than 180 days after such undercover operation is closed, submit a report to the Congress concerning such audit.

"(2) For purposes of these audit and reporting requirements:

"(A) the term "closed" refers to the point in time at which-

- "(i) all criminal proceedings (other than appeals) are concluded, or
- "(ii) covert activities are concluded, whichever occurs later;

"(B) the terms 'undercover investigative operation' and 'undercover operation' mean any undercover investigative operation of a bureau (other than a foreign counterintelligence undercover investigative operation)-

"(i) in which-

"(a) the gross receipts (excluding interest earned) exceed \$150,000, or

"(b) expenditures (other than expenditures for salaries of employees) exceed \$150,000, and

"(ii) which is exempt from laws applicable to federal appropriations and government corporations.

"(f) The Commissioner of the Immigration and Naturalization Service, or his designee, and the Director of the United States Marshals Service, or his designee, shall include in the request for the Attorney General's certification required by subsection (b)(1) of this section: the expected time period for utilizing the exemptions, the expected resources to be committed, a description of the circumstances for using the exemptions, and a specification of the scope of the effort.

"579. Reimbursement of Litigation Expenses.

"The Attorney General may enter into reimbursable agreements with other Federal Government agencies or components within the Department of Justice to pay expenses of private counsel to defend Federal Government employees sued for actions while performing their official duties."

SEC. 202. Section 6 of the Act of July 28, 1950 (64 Stat. 380), 8 U.S.C. 1555, is hereby repealed.

SEC. 203. Sections 4043 and 4044 of Title 18, United States Code, and section 871(c) of Title 21, United States Code, are hereby repealed.

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